

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Rhoda K. Bailey

vs.

Award #  
94-00371

Name of Respondent

Thomas G. Wing

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**REPRESENTATION**

For Claimant: Rhoda K. Bailey ("Claimant"), Joseph P. Carmichael, Esq. located in Boston, Massachusetts.

For Respondent: Thomas G. Wing, ("Respondent"), Edward T. Robinson, Esq. of Seegel, Robinson & Lipshutz located in Wellesley, Massachusetts.

**CASE INFORMATION**

Statement of Claim was filed on November 18, 1994.

Claimant's Submission Agreement was signed on September 26, 1994.

Statement of Answer was filed by Respondent on May 11, 1994.

Respondent's Submission Agreement was signed on May 6, 1994.

**HEARING INFORMATION**

Hearing Dates/Sessions:	April 3, 1995	-	Two Sessions
	April 4, 1995	-	Two Sessions

Hearing Location: American Arbitration Association  
11th Floor  
133 Federal Street  
Boston, MA 02110

### **CASE SUMMARY**

In her four count Statement of Claim, Claimant alleges that Respondent breached his fiduciary duty to her by recommending that she purchase unsuitable investments that were inconsistent with her stated investment objectives. Claimant also alleges that there was an overconcentration of limited partnerships in her portfolio, that it was not until May, 1993 that she discovered that Respondent mishandled her account and that Respondent prevented her from discovery due to misstatements and omissions of material facts.

Claimant also states that she was led to believe that she had invested in bonds.

Respondent denies the allegations of wrongdoing, denies liability for Claimants losses and asserts nine affirmative defenses, including one that claims concerning the purchases prior to January 18, 1988 are ineligible for arbitration pursuant to Section 15 of the *Code of Arbitration Procedures* ("Code").

Respondent contends that Claimant constantly stated that she wanted income and any recommendations made were approved by her after all disclosures were made and were consistent with her objectives. Respondent also contends that Claimant's portfolio was diversified.

### **RELIEF REQUESTED**

Claimant requests out of pocket loss of \$43,000, interest, money that she would have received had her account been properly managed, attorneys fees, punitive damages, costs, expenses and disbursements and such other relief as the Arbitration Panel deems just and proper.

Respondent requests that the Statement of Claim be dismissed and that costs of the proceeding be assessed against Claimant.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by Claimant against Respondent are denied.

**FORUM FEES**

Pursuant to Section 43(c) of the *Code*, the following are due:

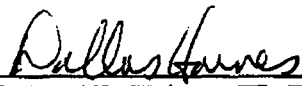
Non-refundable filing fee:	\$150.00
Hearing session fees:	\$2000.00 (4 hearing sessions @ \$500.00 per session)
Total fees:	\$2150.00

Claimant is assessed a nominal forum fee of \$900.00. Claimant previously paid \$650 and owes a balance of \$250.00.

**ARBITRATION PANEL**

Dallas W. Haines, III, Esq.	-	Public Chairperson
Colette Manoil, Esq.	-	Public Panelist
Jack A. Marshall	-	Industry Panelist

Concurring Arbitrator's Signature

  
Dallas W. Haines, III, Esq.

Date of Decision: May 17, 1995

1. All claims asserted by Claimant against Respondent are denied.

**FORUM FEES**

Pursuant to Section 43(c) of the *Code*, the following are due:

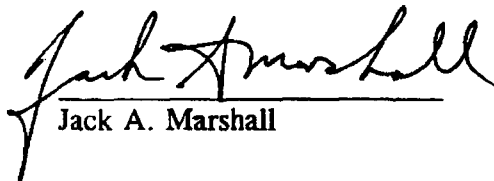
Non-refundable filing fee:	\$150.00
Hearing session fees:	\$1000.00 (2 hearing sessions @ \$500.00 per session)
Total fees:	\$1150.00

Claimant is assessed a nominal forum fee of \$900.00. Claimant previously paid \$650 and owes a balance of \$250.00.

**ARBITRATION PANEL**

--	Dallas W. Haines, III, Esq.	-	Public Chairperson
	Colette Manoil, Esq.	-	Public Panelist
	Jack A. Marshall	-	Industry Panelist

Concurring Arbitrator's Signature

  
\_\_\_\_\_  
Jack A. Marshall

Date of Decision: May 17, 1995

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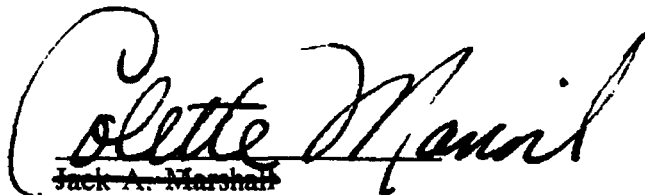
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	Colette Manoil, Esq.	-	Public Panelist
	Jack A. Marshall	-	Industry Panelist

Concurring Arbitrator's Signature

  
~~Jack A. Marshall~~  
Colette MANOIL

Date of Decision: May 17, 1995